



Where a party fails to sufficiently comply with the local rules or a Court's scheduling order requiring it to identify witnesses and exhibits it intends to use at trial, a Court may strike the party's exhibit and witness list under its discretion, unless good cause is shown. *See Cimarex Energy Co. v. Calhoon*, No. Civ-11-525-D, 2014 U.S. Dist. 6202, at \*7–8 (W.D. Okla. Jan. 7, 2014); *Meltzner v. Anthem Ins. Cos.*, No. CIV-17-1023-SLP, 2019 U.S. Dist. LEXIS 89692, at \*1–3 (W.D. Okla. May 29, 2019) (striking a party's exhibit list that included overly broad descriptions such as “all documents used by Defendants as exhibits to depositions”). *Cf.* Dkt. No. 43 at Exhibit No. 10 (“All documents identified in depositions or discovery not otherwise objected to by Defendant.”).

Finally, the Court's Scheduling Order states Plaintiff shall object to Defendant's exhibits and witnesses under Rule 26(a)(3)(B) of the Federal Rules of Civil Procedure. Dkt. No. 23 at ¶4. Rule 26(a)(3)(B) states a party shall object to materials identified under Rule 26(a)(3)(A)(iii) which calls for “an identification of each document or other exhibit . . . *separately identifying those items the party expects to offer . . .*” *See* FED. R. CIV. P. 26(a)(3)(A)(iii) (emphasis added); *see also* FED. R. CIV. P. 26(a)(3)(B). Because Defendant has failed to separately identify each exhibit it expects to offer and each witness it expects to introduce at trial, Plaintiff may assert an objection to those exhibits and witnesses not yet identified at their initial offering. *See* FED. R. CIV. P. 26(a)(3)(B); 26(a)(3)(A)(iii).

Plaintiff makes the above objection based on available information and acknowledges Defendant may cure these objections through amended exhibit and witness lists. Plaintiff may withdraw these objections at a later date when Defendant supplements its exhibit and witness lists and more detail is provided.

## II. OBJECTIONS

**Defendant's Exhibit No. 2**

2. Plaintiff objects on the basis that Traveler's claim notes contain statements made by an out of court declarant that are being offered to prove the truth of the matter asserted. Therefore, Traveler's claim notes are hearsay and inadmissible under Rule 802 of the Federal Rules of Evidence. *See* FED. R. EVID. 802. Further, Traveler's claim notes contain statements made by other out of court declarants also being offered to prove the truth of the matter asserted. As a result, Traveler's claim notes contain hearsay within hearsay and are inadmissible. *See* FED. R. EVID. 805. Plaintiff reserves the above objections with knowledge Defendant may be able to cure the hearsay objections at trial.

**Defendant's Exhibit No. 4**

3. Plaintiff objects on the basis that Traveler's claim file contain statements made by an out of court declarant that are being offered to prove the truth of the matter asserted. Therefore, Traveler's claim file is hearsay and inadmissible under Rule 802 of the Federal Rules of Evidence. *See* FED. R. EVID. 802. Further, Traveler's claim file contains statements made by other out of court declarants also being offered to prove the truth of the matter asserted. As a result, Traveler's claim file contain hearsay within hearsay and are inadmissible. *See* FED. R. EVID. 805. Plaintiff reserves the above objections with knowledge Defendant may be able to cure the hearsay objections at trial.

**Defendant's Exhibit No. 5**

4. Plaintiff objects to the listing of deposition transcripts as exhibits. Plaintiff reserves its right to object to Defendant's deposition designations as provided in the Court's updated deadlines. *See* Dkt. No. 47 ("Designations of deposition testimony to be used at trial to be filed by: 5/18/2022. Objections and counter-designations to be filed by: 5/25/2022.").

**Defendant's Exhibit No. 6**

5. Plaintiff objects on the basis that weather reports for wind/tornado related events prior to or after Date of Loss contain statements made by an out of court declarant that are being offered to prove the truth of the matter asserted. Therefore, weather reports for wind/tornado related events prior to or after Date of Loss are hearsay and inadmissible under Rule 802 of the Federal Rules of Evidence. *See* FED. R. EVID. 802. Plaintiff reserves the above objection with knowledge Defendant may be able to cure the hearsay objection at trial.

**Defendant's Exhibit No. 16**

6. Plaintiff objects on the basis that Traveler's experts' curriculum vitae contain statements made by an out of court declarant that are being offered to prove the truth of the matter asserted. Therefore, Traveler's experts' curriculum vitae are hearsay and inadmissible under Rule 802 of the Federal Rules of Evidence. *See* FED. R. EVID. 802. Plaintiff reserves the above objection with knowledge Defendant may be able to cure the hearsay objection at trial.

**Defendant's Exhibit No. 17**

7. Plaintiff objects on the basis that Traveler's experts' reports contain statements made by an out of court declarant that are being offered to prove the truth of the matter asserted. Therefore, Traveler's experts' reports are hearsay and inadmissible under Rule 802 of the Federal Rules of Evidence. *See* FED. R. EVID. 802. Further, Traveler's experts' reports contain statements made by other out of court declarants also being offered to prove the truth of the matter asserted. As a result, Traveler's experts' reports contain hearsay within hearsay and are inadmissible. *See* FED. R. EVID. 805. Plaintiff reserves the above objections with knowledge Defendant may be able to cure the hearsay objections at trial.

**III.  
RESEVATION OF RIGHT TO OBJECT AT TRIAL**

Because of Defendant's lack of sufficient descriptions when listing exhibits and witnesses, Plaintiff is unable to object now to all proposed exhibits and witnesses Defendant expects to offer at trial. Therefore, Plaintiff reserves the right to object to any new witness not named or new exhibit not identified in either Defendant's exhibit list (Dkt. No. 43) or Defendant's witness list (Dkt. No. 44). Plaintiff's objections are filed subject to further conference with Defendant.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties through counsel of record pursuant to the Federal Rules of Civil Procedure on January 11, 2022 in manner described below:

***via electronic service***

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